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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Council Regulation amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe, as regard the Chips Joint Undertaking - Presidency text

Delegations will find attached a Presidency text on the above-mentioned proposal with a view to the Research Working Party meeting on 2 March 2023.

Changes in comparison to doc. 15368/22 are marked in **bold underline** for additions and in ~~strikethrough~~ for deletions.

General scrutiny reservation: All delegations.

ANNEX

Proposal for a

COUNCIL REGULATION

amending Regulation (EU) 2021/2085 establishing the Joint Undertakings under Horizon Europe, as regards the Chips Joint Undertaking

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 187 and Article 188, first paragraph thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Whereas:

(1) Council Regulation (EU) 2021/2085[3] establishes the Joint Undertakings under Horizon Europe, including the Key Digital Technologies Joint Undertaking.

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1 OJ C , , p. .

2 OJ C , , p. .

3 Council Regulation (EU) 2021/2085 of 19 November 2021 establishing the Joint Undertakings under Horizon Europe and repealing Regulations (EC) No 219/2007, (EU) No 557/2014, (EU) No 558/2014, (EU) No 559/2014, (EU) No 560/2014, (EU) No 561/2014 and (EU) No 642/2014 (OJ L 427, 30.11.2021, p.17).

(2) The Key Digital Technologies Joint Undertaking addresses clearly defined topics that enable European industries at large to design, manufacture and use the most innovative technologies in electronic components and systems.

[(3) Regulation (EU) […][4] establishes a framework for increasing the Union's resilience in the field of semiconductor technologies, stimulating investment, strengthening the capabilities of the Union's semiconductor supply chain, and increasing cooperation among the Member States and the Commission. To create the conditions necessary to strengthen the Union's industrial innovation capacity, the Chips for Europe Initiative is established. In order to ensure a consistent implementation of the Chips for Europe Initiative, the European Semiconductor Board should provide advice to the Public Authorities Board.]

(4) The activities supported under the Chips for Europe Initiative should be funded from Regulation (EU) 2021/695 of the European Parliament and of the Council[5] establishing the Horizon Europe Programme and from Regulation (EU) 2021/694 of the European Parliament and of the Council[6] establishing the Digital Europe Programme and should be implemented in accordance with the rules of the respective Programmes.

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4 OJ L …, p…

5 Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

6 Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 (OJ L 166, 11.5.2021, p. 1).

[(5) The Chips for Europe Initiative aims to reinforce the competitiveness and resilience of the semiconductor technological and industrial base, whilst strengthening the innovation capacity of its semiconductor ecosystem, reducing dependence on a limited number of third country companies and geographies, and strengthening its capacity to design and produce advanced semiconductors. These aims should be supported by bridging the gap between the Union's advanced research and innovation capabilities and their industrial exploitation. It should promote capacity building to enable design, production and systems integration in next-generation semiconductor technologies, enhance collaboration among key players across the Union, strengthening Europe's semiconductor supply and value chains, serving key industrial sectors, and creating new markets.]

(6) The operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] should be implemented through actions that should build upon the strong knowledge base acquired by the Electronic Components and Systems for European Leadership (ECSEL) Joint Undertaking and the Key Digital Technologies Joint Undertaking. The Key Digital Technologies Joint Undertaking should be renamed Chips Joint Undertaking and should be tasked with providing financial support, through any instrument or procedure provided for in Horizon Europe or the Digital Europe Programme, to actions funded under the Chips for Europe Initiative. Throughout the lifetime of the Chips Joint Undertaking, [up to EUR 2.475 billion] should be dedicated to the Chips for Europe Initiative, of which [EUR 1.125 billion] for capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and [EUR 1.35 billion] for research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation]. Furthermore, [EUR 1.3 billion] should be dedicated to research and innovation activities not covered under the Chips for Europe Initiative.

(7) The activities funded by the Chips Joint Undertaking should be covered in one single work programme, which should be adopted by the Governing Board. The work programme should include two specific parts. The first specific part should include a sub-section on capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and sub-section on research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation]. The second specific part should be dedicated to research and innovation activities not covered under the Chips for Europe Initiative.

(7a) All research and innovation activities, including those related to the Chips for Europe Initiative, should be financed through Horizon Europe to implement the Strategic Research and Innovation Agenda. The sub-section dedicated to capacity building activities should be financed through the Digital Europe Programme.

(7aa) [The work programme should include the conditions for access to publicly funded infrastructure, such as pilot and testing facilities and the network of competence centres, ensure openness to a wide range of users and grant access on a transparent and non-discriminatory basis.]

(7b) Before the work programme is prepared, the Public Authorities Board, taking into account **the advice of the private members to ensure the industrial relevance of the activities set out in the work programme and,** where appropriate**,** the advice of the European Semiconductor Board and input from other relevant stakeholders, should outline the specific parts and relevant sub-sections, including their corresponding expenditure estimates. For this purpose, the Public Authorities Board should include only the Commission and Member States. Subsequently, on the basis of this outline and the Strategic Research and Innovation Agenda, the Executive Director should prepare the work programme for both specific parts and relevant sub-sections and their corresponding expenditure estimates.

(8) ~~The~~ **All** representatives of the Governing Board should ~~be involved~~ **participate** in the preparation of the work programme, ~~participate~~ in the relevant discussions and receive the necessary information. When the Governing Board adopts the work programme, the voting rights for the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative should be limited to the Commission and Member States only. The voting rights for the specific part of the work programme dedicated to R&I activities not covered under the Chips for Europe Initiative should be equally shared between the Commission, the Participating States, and the private members. In the event that a decision on one of the two parts of the work programme cannot be reached, the work programme should be adopted including only the part on which a positive decision has been reached.

(9) The Public Authorities Board should be responsible for the selection of proposals. For the selection of proposals related to the implementation of the Chips for Europe Initiative, the Public Authorities Board should include only the Commission and Member States.

[(10) Deleted.]

(11) [The calls for proposals under the Chips for Europe Initiative should be open to different legal forms of cooperation and other participants, and the selection of proposals for funding should not be based on a specific legal form of cooperation.~~]~~ With a view to facilitating the implementation of the actions of the Chips for Europe Initiative and enhance cooperation between legal entities, particularly Research and Technology Organisations, a European Chips Infrastructure Consortium **(ECIC)** may be set up in accordance with **[Article 7 of** ~~[~~the Chips Act]. A**n ECIC** ~~European Chips Infrastructure Consortium~~ should involve the participation of at least three members, which can be Member States, public or private legal entities from at least three Member States, or a combination thereof.**]**

(11a) Given that the activities supported under the Chips for Europe Initiative and implemented by the Chips Joint Undertaking are financed from Horizon Europe programme and the Digital Europe programme, the Union financial contribution to the Chips Joint Undertaking indicated in Article 128 of Council Regulation (EU) 2021/2085 should be increased accordingly. The administrative costs of the Chips Joint Undertaking should also be increased in accordance with the increase of operational tasks. The private members and the participating states should not contribute to the additional administrative costs.

(12) Provision of financial support to activities from the Digital Europe Programme should comply with Regulation (EU) 2021/694.

[(13) Deleted]

(14) Council Regulation (EU) 2021/2085 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2021/2085 is amended as follows:

(1) Article 2 is amended as follows:

(a) Points 2, 3 and 4 are replaced by the following:

"2. 'founding member' means any legal entity established in a Member State, a country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme, or an international organisation that is identified as a member of a joint undertaking in this Regulation or in one of its Annexes;

"3. 'associated member' means any legal entity established in a Member State, a country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme, or an international organisation that accedes to a joint undertaking by signing a letter of commitment in accordance with Article 6(3) and subject to an approval in accordance with Article 7;

4. 'participating state' means any Member State or country associated to Horizon Europe or, where applicable, associated to the Digital Europe Programme upon notification of its participation in the activities of the relevant joint undertaking by means of a letter of commitment;";

(2) Article 3 is amended as follows:

(a) In paragraph 1, point (g) is replaced by the following:

"(g) the Chips Joint Undertaking;";

(b) paragraph 3 is replaced by the following:

"3. In order to take into account the duration of Horizon Europe and, where applicable, the Digital Europe Programme, calls for proposals under the joint undertakings shall be launched at the latest by 31 December 2027. In duly justified cases, calls for proposals may be launched by 31 December 2028, at the latest."

(3) In Article 4 (1), the following subparagraph is added:

"The Chips Joint Undertaking shall also contribute to the general objective referred to in Article 4(1) and the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the **[**Chips Regulation] and to the general objectives of Digital Europe Programme, as set out in Article 3(1) of the Digital Europe Programme."

(4) In Article 10, paragraphs 2 and 3 are replaced by the following:

"2. The amount of the Union contribution specified in Part Two may be increased with contributions from third countries associated to Horizon Europe in line with Article 16(5) of Regulation (EU) 2021/695 and, where applicable, to the Digital Europe Programme in accordance with point (d) of Article 10(1) of Regulation (EU) 2021/694, provided that the total amount by which the Union contribution is increased is at least matched by the contribution of members other than the Union, or their constituent or affiliated entities.

3. The Union contribution shall be paid from the appropriations in the general budget of the Union allocated to the Specific Programme implementing Horizon Europe and, where applicable, to the Digital Europe Programme, in accordance with Article 62(1), point (c)(iv), and Article 154 of Regulation (EU, Euratom) 2018/1046 in the case of bodies referred to in Article 71 of that Regulation."

(5) Article 12(1) is amended as follows:

(a) The second subparagraph of paragraph 1 is replaced by the following:

"1. In addition to criteria set out in Article 22 of the Horizon Europe Regulation or, in the case of the Chips Joint Undertaking, in Article 18 of the Digital Europe Programme, the work programme may include, as an annex, eligibility criteria regarding national legal entities."

(b) The third subparagraph of paragraph 1 is replaced by the following:

"Each participating state shall entrust the joint undertaking with the evaluation of the proposals according to the Horizon Europe Regulation and, where applicable, to the Digital Europe Programme."

(6) In Article 29, paragraph 2 is replaced by the following:

(a) Paragraph 2 is replaced by the following:

"2. Budgetary commitments of the joint undertakings referred to in Article 3(1), points (b), (d), (g) and (h), may be divided into annual instalments. Until 31 December 2024, the cumulative amount of those budgetary commitments in instalments shall not exceed 50 % of the maximum Union contribution set out in Article 10. From January 2025, at least 20 % of the cumulative budget of the residual years shall not be covered by annual instalments."

(7) Article 126 is amended as follows:

(a) In paragraph 1 point (b) is replaced by the following:

"(b) Establish Union scientific excellence and innovation leadership in emerging components and systems technologies, including in activities related to lower TRLs; and promote the active involvement of SMEs, which, for all research and innovation activities, including those related to the Chips for Europe Initiative, shall represent at least one third of the total number of participants in indirect actions and at least 20 % of public funding should go to them."

[(b) In paragraph 1 the following point (d) is added:

"(d) increase large-scale capacity throughout the Union in cutting-edge and next-generation semiconductor technologies to reinforce the Union's advanced design, systems integration and semiconductor production capabilities and limit where possible the environmental footprint."]

(c) In paragraph 2 point (f) is replaced by the following:

"(fa) establish coherence between the Strategic Research and Innovation Agenda of the Chips Joint Undertaking and Union policies so that electronics components and systems technologies contribute efficiently."

[(d) In paragraph 2 the following points (g), (h), (i) and (j) are added:

"(g) build up large-scale design capacities for integrated semiconductor technologies.

(h) enhance existing and develop new pilot lines.

(i) build advanced technology and engineering capacities for accelerating the development of quantum chips.

(j) establish a network of competence centres across Europe."]

(8) Article 128 is replaced by the following:

Article 128

1. The Union financial contribution to the Joint Undertaking including EEA appropriations shall be up to EUR [3 775 000 000], including up to EUR 50 174 000 for administrative costs distributed as follows:

(a) up to EUR [2 650 000 000] from Horizon Europe;

(b) up to EUR [1 125 000 000] from the Digital Europe Programme;

[2. Deleted.]

[3. Deleted.]

4. The Union financial contribution referred to in paragraph 1 point (a) of this Article shall be used for the Joint Undertaking to provide financial support to indirect actions as defined in Article 2, point (43), of Regulation (EU) 2021/695, corresponding to the research and innovation activities of the Joint Undertaking, including research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation].

5. The Union financial contribution referred to in paragraph 1 point (b) shall be used for capacity building activities of the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation].

(9) In Article 129 paragraph 3 is replaced by the following:

"3. By way of derogation from Article 28(4), the private members shall make or arrange for their constituent and affiliated entities to make a financial contribution of up to EUR 26 331 000 for administrative costs of the Chips Joint Undertaking. The share of the total contribution on an annual basis for administrative costs of the Chips Joint Undertaking by the private members shall be 35%."

(10) In Article 133, the following paragraph 3a is added:

"3a. By derogation from paragraph 1, the Governing Board shall solely include the Commission and Member States when voting on the specific part of the work programme dedicated to the implementation of the Chips for Europe Initiative. The Commission shall hold 50% of the voting rights. Paragraphs 2 and 3 shall apply *mutatis mutandis* to the voting rights of the Member States. **All representatives of the Governing Board shall participate in the preparation of that specific part of the work programme.**"

(11) The following Article 133a is inserted:

Article 133a

Rules applicable to the activities funded under the Digital Europe Programme

1. In addition to Article 24(2), Regulation (EU) 2021/694 shall apply to the activities funded by the Chips Joint Undertaking under the Digital Europe Programme.

2. The work programme and the calls for proposals of the Chips Joint Undertaking shall be published on the website of the Digital Europe Programme.

3. In the case of the Chips Joint Undertaking, ex post audits of expenditure on activities funded by the Digital Europe Programme budget shall be carried out by the Joint Undertaking in accordance with Article 27 of Regulation (EU) 2021/694.

(12) Article 134 is replaced by the following:

Article 134

Limitations and conditions to participation in specific actions

1. For actions funded under the Horizon Europe, by way of derogation from Article 17(2), point (l), where the Commission so requests, following approval of the Public Authorities Board, participation in specific actions shall be limited in accordance with Article 22(5) of Regulation (EU) 2021/695.

2. For actions funded under the Digital Europe Programme, where the Commission so requests, following approval of the Public Authorities Board, participation in specific actions shall be limited in accordance with Articles 12(6) and 18 of the Regulation (EU) 2021/694.

~~3. For actions funded under more than one contributing Union programme, the work programme shall set joint conditions, including for the limitation of participation under paragraphs 1-2 of this Article, in accordance with the rules of the contributing Union programmes.~~

[4. The calls for proposals provided in the work programme under the Chips for Europe Initiative shall be open to different legal forms of cooperation and to other participants. The selection of proposals for funding shall not be based on a specific legal form of cooperation. Actions may also be carried out by legal entities cooperating within a consortium structured in a form of ~~European Chips Infrastructure Consortium~~ **an ECIC**, in accordance with [Article 7 of the Chips Act]. The work programme shall specify that, where an ECIC applies for funding for a specific action, the ECIC itself, and not individual entities forming the ECIC, shall be the applicant.**]**

(13) The following Article 134a is inserted:

Article 134a

Additional tasks of the Executive Director

~~In addition to the tasks listed in Article 19~~ **By derogation from Article 19(4) point (c)**, the Executive Director of the Chips Joint Undertaking shall prepare on the basis of the outline prepared by the Public Authorities Board as referred to in Article 137~~(f)~~**(aa)** and of the Strategic Research and Innovation Agenda and submit for adoption to the Governing Board the work programme for the joint undertaking.

(14) Article 136 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. For the purpose of paragraphs (1) and (2) of Article 134, the Public Authorities Board shall include only the Member States. Paragraph 1 shall apply *mutatis mutandis*."

(b) Paragraph 2a is inserted:

"2a. For the purpose of point (aa) of Article 137 and for the selection of proposals corresponding to the implementation of the Chips for Europe Initiative under point (d) of Article 137, the Public Authorities Board shall include only the Commission and Member States. Paragraph 1 shall apply mutatis mutandis."

(15) Article 137 is amended as follows:

[(a) Deleted]

(a**a**) The following point (aa) is added:

"(aa) before each work programme is prepared and taking into account **the advice of the private members and,** where appropriate**,** the advice of the European Semiconductor Board and input from other relevant stakeholders, outline two specific parts of the work programme, the first of which shall include a sub-section on capacity building activities for the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation] and a sub-section on research and innovation activities related to the operational objectives referred to in Article 4(2), points (a), (b), (c) and (d) of the [Chips Regulation]**, including conditions for access to publicly funded infrastructure,** and the second of which shall be dedicated to research and innovation activities not covered under the Chips for Europe Initiative, including the corresponding expenditure estimates;"

(b) Point (d) is replaced by the following:

"(d) select proposals in accordance with Articles 12(1) and 17(2), point (u);"

[(c) The following point (ea) is added:

"(ea) request, if necessary, that an ECIC takes remedial action, such as an amendment to its Statutes, where a Member State has brought the matter to the Public Authorities Board's attention following a refusal **by the ECIC** of a new membership **without reasonably justifying such a refusal on the basis of the fair and reasonable terms specified in the Statutes**."**]**

(16) Article 141 is replaced by the following:

Article 141

Funding rates and rules for participation

1. For indirect actions funded under Horizon Europe, in accordance with Article 17(2) of Regulation (EU) 2021/695 and by way of derogation from Article 34 of that Regulation and for activities funded under the Digital Europe Programme, the Chips Joint Undertaking may apply different funding rates for the Union funding within an action depending on the type of participant, in particular SMEs and non-profit legal entities, and the type of action. The funding rates shall be indicated in the work programme.

2. Where it is duly justified in the description of relevant topics in the work programme, a single legal entity established in a Member State or associated country or consortia not meeting the condition laid down in Article 22(2) of Regulation (EU) 2021/695 or in Article 18 of Regulation (EU) 2021/694 shall be eligible to participate in actions funded by the Chips Joint Undertaking.

(17) The references to "Key Digital Technologies Joint Undertaking" shall be understood as referring to "Chips Joint Undertaking".

Article 2

This Regulation shall enter into force on the date of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council

The President